

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT HENRY,

Petitioner,

v.

ROBERT BURTON,

Respondent.

No. 2:22-cv-0609 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 13, 2023, the magistrate judge filed amended findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the amended findings and recommendations were to be filed within thirty days. Petitioner filed timely objections to the amended findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. Accordingly, this action will be dismissed for lack of jurisdiction due to petitioner's failure to obtain authorization from the United States Court of Appeals for the Ninth Circuit to proceed

1 with a second or successive petition as required by 28 U.S.C. § 2244(b)(3)(A). Petitioner's
2 request for a certificate of appealability, ECF No. 20 at 6, will be construed as a request for
3 authorization to file a second or successive petition and, so construed, transferred to the United
4 States Court of Appeals for the Ninth Circuit. *See Cooper v. Calderon*, 274 F.3d 1270, 1275
5 (9th Cir. 2001).

6 Accordingly, IT IS HEREBY ORDERED as follows:

- 7 1. The amended findings and recommendations filed December 13, 2023 (ECF No. 19),
8 are adopted in full;
- 9 2. The petition is dismissed for lack of jurisdiction;
- 10 3. Petitioner's request for a certificate of appealability, ECF No. 20 at 6, is construed as a
11 request for authorization to file a second or successive petition in accordance with 28 U.S.C.
12 § 2244(b)(3)(A); and
- 13 4. The Clerk of Court is directed to transfer this action to the United States Court of
14 Appeals for the Ninth Circuit.

15 DATED: April 15, 2024.

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18 CHIEF UNITED STATES DISTRICT JUDGE
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